

**THE COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
DEPARTMENT OF CHILDREN AND FAMILIES  
600 WASHINGTON STREET, 6<sup>TH</sup> FLOOR  
BOSTON, MASSACHUSETTS 02111**

**Linda Spears  
Commissioner**

**Voice: 617-748-2000  
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IN THE MATTER OF

EK #2018 0126

**FAIR HEARING DECISION**

Appellant, EK (“Appellant”), appeals the Department of Children and Families (hereinafter “DCF” or “the Department”) decision to support allegations of neglect pursuant to M.G.L. c. 119, §§51A and B.

**Procedural History**

On November 26, 2017, the Department received a report which alleged neglect of S and R by the Appellant, who was their mother’s boyfriend. The reporter responded to a report of a domestic assault and DA, the Appellant’s girlfriend, disclosed that she and the Appellant had drinks together and went out to eat with the children. During the meal the Appellant became upset when DA spurned his marriage proposal and left the restaurant. DA and the children were with the Appellant in his car, which according to DA, he was driving at a “high rate of speed” before he pulled into a parking lot, yanked DA out of the car and threw her to the ground. The Appellant was arrested. The Department screened-in the report and conducted a response.

On November 27, 2017, the Department received a second report which alleged neglect of the children by DA, on the basis that she punched the Appellant in the face during a verbal argument and when he pulled over, DA got out of the car and fell, called the police and claimed the Appellant had thrown her out of the car which resulted in his arrest. The report alleged DA then broke into the Appellant’s home, vandalized his belongings and stole firearms. The Department incorporated the report into the open response.

On December 22, 2017, the Department made the decision to support allegations of neglect of S and R by the Appellant. The Department notified the Appellant of its decision and his right to appeal.

Appellant made a timely request for a Fair Hearing under 110 CMR 10.06(4) (b). A

hearing was held at DCF Springfield Area Office on March 22, 2018. In attendance were Maura Bradford, Administrative Hearing Officer; EK, DCF Supervisor; LD, DCF Supervisor.

In accordance with 110 CMR 10.03, the Administrative Hearing Officer attests to impartiality in this case; having had no direct or indirect interest, personal involvement or bias in this case.

The Fair Hearing was digitally recorded and transferred to one (1) Compact Disc. The witnesses were sworn in to testify under oath.

Prior to the completion of the hearing, the record was left open for additional submissions by the Appellant.

The Hearing Officer need not strictly follow the rules of evidence. The Massachusetts Rules of Evidence do not apply; only evidence which is relevant and material may be admitted and may form the basis of the decision. 110 CMR 10.21

The following evidence was entered into the record:

For the Department:

- Exhibit A: 51A Report of November 26, 2017
- Exhibit B: 51A Report of November 27, 2017
- Exhibit C: 51B Report completed on December 22, 2017 by MM

For the Appellant(s):

- Exhibit 1: Photograph of EK

**Issue to be Decided**

The issue presented in this Hearing is whether, based upon the evidence and the Hearing record as a whole, and on the information available at the time of and subsequent to the response, the Department's decision or procedural action, in supporting the 51A report, violated applicable statutory or regulatory requirements, or the Department's policies or procedures, and resulted in substantial prejudice to the Appellant. If there is no applicable statute, policy, regulation or procedure, the issue is whether the Department failed to act with a reasonable basis or in a reasonable manner, which resulted in substantial prejudice to the Appellant. For a decision to support a report of abuse or neglect, giving due weight to the clinical judgments of the Department social workers, the issue is whether there was reasonable cause to believe that a child had been abused or neglected and the actions or inactions by the parent(s)/caregiver(s) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.05 DCF Protective Intake Policy #86-015, rev. 2/28/16

## Findings of Fact

1. The Appellant was in a dating relationship with DA, who is the mother of S and R. At the time of the report in question, the children were twelve (12) years old and six (6) years old, respectively. (Exhibit C; Testimony of Appellant)
2. The Appellant and DA had known each other for seventeen (17) years and were in a casual dating relationship since June 2017.<sup>1</sup> The Appellant and DA did not reside together. The Appellant was not a frequent visitor to DA's home or involved with the children's daily care.<sup>2</sup> (Exhibit C, pp. 2, 4, 6; Testimony of LD and Appellant)
3. It was undisputed that on November 25, 2017, after the Appellant proposed to DA and she refused, there was an altercation between the Appellant and DA which the children witnessed and following which the Appellant was arrested. (Exhibit C, pp. 2-6; Exhibit 1; Testimony of Appellant)
4. On November 26, 2017, the Department received a report which alleged neglect of S and R by the Appellant, who was their mother's boyfriend. The basis of the reporter's concern was an altercation between the Appellant and DA which was witnessed by the children. The Department screened-in the report (Exhibit A) and conducted a response. (Exhibit C)
5. On November 27, 2017, the Department received a second report regarding the incident, which alleged neglect of the children by DA due to her role in the altercation. The Department screened-in the report (Exhibit B) and incorporated the report into the open response.
6. The Department conducted interviews with DA, R and S. DA confirmed she was the primary caregiver for the children and her mother was an alternate caregiver. Neither child identified the Appellant as a caregiver or frequent visitor to their home. (Exhibit C, pp. 2, 4)
7. Following the reported incident, DA acquired an abuse prevention order and moved to a new residence with the children to avoid any further contact with the Appellant. (Exhibit C, pp. 2, 3; Testimony of LD)
8. The Department interviewed the Appellant. The Appellant provided an account of what had occurred and corroborated that the children witnessed the altercation. During the interview, the Appellant denied he was a caregiver for the children. (Exhibit C, p. 6)
9. On December 22, 2017, the Department supported allegations of neglect of S and R by the Appellant. Based upon information obtained during the response, the

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<sup>1</sup> DA told the DCF Response Worker they "would talk and meet up" but denied they were romantically involved. (Exhibit C, p. 4)

<sup>2</sup> The Appellant testified that he gave DA money to pay her rent.

Department determined the Appellant neglected the children. The Department determined the Appellant failed to provide minimally adequate emotional stability and growth for the children due to his involvement in an altercation with DA that was witnessed by the children; and, the Department determined the Appellant's actions posed substantial risk to the children's safety and well-being. (110 CMR 2.00; DCF Protective Intake Policy #86-015, rev. 2/28/16; Testimony of LD)

10. I find that at the time of the report in question, the Appellant did not meet the definition of a caregiver for S and R as defined by Department regulations (110 CMR 2.00). Whereas the Appellant was not a caregiver for S and R at the time of the reported incident, I find the Department's decision to support allegations of neglect of the children by the Appellant was not in compliance with Department regulations. (110 CMR 4.21; 110 CMR 4.32; DCF Protective Intake Policy #86-015, rev. 2/28/16)
11. No further factual finding will be made as to the validity of the allegations of neglect of R and S by the Appellant.

### **Applicable Standards**

To "support" a report of abuse or neglect, the Department must have reasonable cause to believe that an incident of abuse or neglect by a caretaker occurred. "Reasonable cause to believe" means a collection of facts, knowledge or observations which tend to support or are consistent with the allegations, and when viewed in light of the surrounding circumstances and credibility of persons providing information, would lead one to conclude that a child has been abused or neglected." 110 CMR 4.32 (2)

"Neglect" is defined as failure by a caretaker, either deliberately or through negligence or inability, to take those actions necessary to provide a child with minimally adequate food, clothing, shelter, medical care, supervision, emotional stability and growth, or other essential care; provided, however, that such inability is not due solely to inadequate economic resources or solely to the existence of a handicapping condition. 110 CMR 2.00

"Caretaker" means a child's:

- (a) parent
- (b) stepparent
- (c) guardian
- (d) any household member entrusted with the responsibility for a child's health or welfare
- (e) any other person entrusted with the responsibility for a child's health or welfare whether in the child's home, a relative's home, a school setting, a day care setting (including babysitting), a foster home, a group care facility, or any other comparable setting. As such "caretaker" includes (but is not limited to) school teachers, babysitters, school bus drivers, camp counselors, etc. The "caretaker" definition is meant to be construed broadly and inclusively to encompass any person who is, at the time in question, entrusted with a degree of responsibility for the child. This specifically includes a caretaker who is him/herself a child (i.e. a babysitter under age 18). 110 CMR 2.00

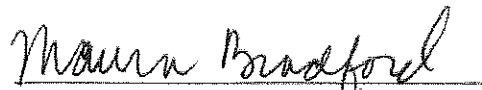
To prevail, an Appellant must show based upon all of the evidence presented at the hearing, by a preponderance of the evidence that: (a) the Department's or Provider's decision was not in conformity with the Department's policies and/or regulations and/or statutes and/or case law and resulted in substantial prejudice to the Appellant, (b) the Department's or Provider's procedural actions were not in conformity with the Department's policies and/or regulations, and resulted in substantial prejudice to the aggrieved party, (c) if there is no applicable policy, regulation or procedure, that the Department or Provider acted without a reasonable basis or in an unreasonable manner which resulted in substantial prejudice to the aggrieved party; or (d) if the challenged decision is a supported report of abuse or neglect, that the Department has not demonstrated there is reasonable cause to believe that a child was abused or neglected and the actions or inactions by the parent(s)/caregiver(s) place the child(ren) in danger or pose substantial risk to the child(ren)'s safety or well-being; or the person was responsible for the child(ren) being a victim of sexual exploitation or human trafficking. 110 CMR 10.23; DCF Protective Intake Policy #86-015, rev. 2/28/16

#### Analysis

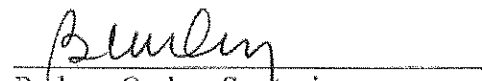
Appellant was in a dating relationship with the children's mother. He did not live with the mother and her children; children did not identify him as someone who took care of them. While Appellant was arrested for an assault on the mother which occurred in the presence of the children no evidence was presented to conclude that the Appellant met the standard of a caretaker at the time of the reported incident.

#### Conclusion and Order

On the basis of the above Findings of Fact, the Department's decision to support allegations of neglect of R and S is **REVERSED**.

  
Maura E. Bradford  
Administrative Hearing Officer

May 27, 2018  
Date

  
Barbara Curley, Supervisor  
Fair Hearing Unit

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Date

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Linda S. Spears  
Commissioner